

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 576 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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MIHIR RAMESHBHAI PAREKH - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Applicant(s) : 1,
MS MEETA PANCHAL APP for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 24/09/2007

ORAL JUDGMENT :

1. Rule. Ms. Meeta Panchal learned A.P.P. waives service of notice of Rule on behalf of the respondent - State.
2. In the facts and circumstances of the case, this revision application is taken up

for final hearing today.

3. The petitioner has filed this revision application u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 and challenged the order passed by learned Addl. Sessions Judge, 2nd Fast Track Court, Anand on 1-9-2007 below Exh. 16 in Sessions Case No. 23 of 2007.

4. The petitioner is being prosecuted for the offence punishable u/s 306 of the I.P. Code. On the basis of complaint filed by Ghanshyambhai Ramjibhai Thakkar father of deceased Varshaben before Anand Town Police Station, offence was registered as I- CR No.321 of 2006 for the aforesaid offence. On completion of investigation, charge sheet was laid before the J.M.F.C., Anand against the petitioner for the aforesaid offence. Thereafter the case was committed to the Sessions Court for trial and it was registered as Sessions Case No. 23 of 2007.

5. The trial court framed charge against the petitioner - accused on 3-6-2007. Thereafter original complainant filed application

Exh. 16, inter-alia, contending that charge for the offence punishable u/s 306 of the I.P. Code has been framed against the petitioner – accused, but on examination of documents, it appears that deceased was aged about 17 years at the time of her death and she was in love with accused before two years of the incident. It is further contended that deceased had written love letters to the accused and it also appears from the contents of the letters that the most beautiful day of their life was 23rd March when they felt touch of their bodies at “S.S.C”; that it indicates that accused had committed sexual intercourse with deceased on 23rd March at “S.S.C.” when deceased was studying in S.S.C., that she was aged about 15 years at that time and was minor and therefore her consent cannot be construed as legal consent; that Hand-writing Expert has also given report that letter was in the hand-writing of deceased and therefore charge for the offence punishable u/s 376 of the I.P. Code is required to be added in the charge framed against the accused.

6. After hearing the parties, the learned trial Judge came to the conclusion that the

letters produced on record appear to be in hand-writing of deceased and the letters indicate that accused and the deceased had sexual intercourse and at the time of incident the deceased was only aged 15 years; therefore, prima facie the accused is involved in the offence punishable u/s 376 of the I.P. Code. The learned trial Judge further observed that whether the accused is involved in the offence punishable u/s 376 of the I.P. Code is a question of evidence which could only be decided after full fledged trial and therefore charge for the offence punishable u/s 376 of the I.P. Code is required to be framed against the accused. Being aggrieved by the impugned order, the petitioner - accused has preferred present revision application.

7. I have heard learned advocate Mr. Y.S. Lakhani for the petitioner and learned A.P.P. Ms. Meeta Panchal for the respondent - State at length and in great detail.

8. Learned advocate Mr. Lakhani for the petitioner submitted that reference of S.S.C. made in the love letter allegedly written by

deceased is a marriage hall named "Shav Shanti Club" at Anand where the petitioner and the deceased allegedly met and therefore learned trial Judge committed error in coming to conclusion that there was sexual intercourse between the petitioner and the deceased when the deceased was studying in S.S.C. and therefore the learned trial Judge has committed error in passing the impugned order.

9. Learned A.P.P. Ms. Panchal has vehemently objected to the submissions made by learned advocate Mr. Lakhani that it is a question of trial and therefore the learned trial Judge was justified in passing the impugned order.

10. The petitioner has produced copy of love letter allegedly written by the deceased at Annexure-F. It appears from the letter that the petitioner had touched the deceased for the first time on 23rd March at "S.S.C.". But it does not indicate that there was any sexual intercourse at that time. It would be too much to interpret these words as both had intercourse. The prosecution case is that alleged incident of intercourse between the

petitioner and deceased took place at the time when the deceased was studying in "S.S.C.". It is stated that there is no investigation to indicate that at the time of alleged incident of intercourse deceased was studying in S.S.C. Even there is no investigation that the deceased was aged 15 years on the day mentioned in the letter. In view of this, there is no cogent and reliable evidence with regard to age of the deceased on 23rd March and that she was staying in "S.S.C.". There is no medical evidence to indicate that the deceased had sexual intercourse. Therefore, the learned trial Judge committed error in passing the impugned order and the impugned order is required to be quashed and set aside.

11. In view of above, present revision application is allowed and the order passed by learned Addl. Sessions Judge, 2nd Fast Track Court, Anand on 1-9-2007 below application Exh. 16 in Sessions Case No. 23 of 2007 is quashed and set aside. Rule made absolute.

(Bankim N. Mehta, J.)

/JVSatwara/